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MARK DILLON, TERESA NOA, MELVIN PONCE,
SONIA PURDY, JUSTIN FUKUMOTO,
ALFREDDA WAIOLAMA, and JACQUELINE RIO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
	)	DEFENDANTS MARK DILLON, TERESA
v.	)	NOA, MELVIN PONCE, SONIA
	)	PURDY, JUSTIN FUKUMOTO,
HAWAIIAN EXPRESS SERVICE,	)	ALFREDDA WAIOLAMA, AND
INC., a California	)	JACQUELINE RIO'S MEMORANDUM IN
corporation; H.E.S.	)	RESPONSE TO PLAINTIFF WAYNE
TRANSPORTATION SERVICES, INC.,	)	BERRY'S MOTION IN LIMINE TO
a California corporation;	)	EXCLUDE EVIDENCE OF MR.
CALIFORNIA PACIFIC	)	BERRY'S ALLEGED VENDETTA
CONSOLIDATORS, INC., a)	
California corporation;)	
JEFFREY P. GRAHAM and PETER	)	<u>Hearing:</u>
SCHAUL, California citizens;)	
MARK DILLON and TERESA NOA,	)	Date: January 20, 2006
BRIAN CHRISTENSEN, Hawaii	)	Time: 2:00 p.m.
citizens; FLEMING COMPANIES,	)	Judge: Hon. Susan Oki
INC., an Oklahoma corporation;	)	Mollway
C & S LOGISTICS OF HAWAII,)	
LLC, a Delaware LLC; C & S)	
WHOLESALE GROCERS, INC., a)	
Vermont corporation; C & S	)	[caption continued on next
ACQUISITIONS, LLC; FOODLAND	)	page]
SUPER MARKET, LIMITED, a)	
Hawaii corporation; HAWAII)	

TRANSFER COMPANY, LIMITED, a)
Hawaii corporation; RICHARD)
COHEN, New Hampshire citizen;)
ES3, LLC, a Delaware Limited)
Liability Company, MELVIN)
PONCE, SONIA PURDY, JUSTIN)
FUKUMOTO, ALFREDDA WAIOLAMA,)
JACQUELINE RIO, Hawaii)
citizens; JESSIE GONSALVES,)
LUIZ RODRIGUES, AL PEREZ and)
PATRICK HIRAYAMA, California)
citizens; GUIDANCE SOFTWARE,)
LLC, a California LLC; MICHAEL)
GURZI, a California citizen;)
ALIX PARTNERS, LLC, a Delaware)
LLC; DOE INDIVIDUALS 2-350;)
DOE PARTNERSHIPS, CORPORATIONS)
and OTHER DOE ENTITIES 2-20,) Trial: January 24, 2006
))
Defendants.)
_____)

**DEFENDANTS MARK DILLON, TERESA NOA, MELVIN PONCE, SONIA PURDY,
JUSTIN FUKUMOTO, ALFREDDA WAIOLAMA, AND JACQUELINE RIO'S
MEMORANDUM IN RESPONSE TO PLAINTIFF WAYNE BERRY'S MOTION IN
LIMINE TO EXCLUDE EVIDENCE OF MR. BERRY'S ALLEGED VENDETTA**

Defendants Mark Dillon, Teresa Noa, Melvin Ponce, Sonia
Purdy, Justin Fukumoto, Alfredda Waiolama, and Jacqueline Rio
("Employees"), by and through their attorneys, Lyle S. Hosoda &
Associates, LLC, hereby responds to Plaintiff Wayne Berry's
Motion in Limine to Exclude Evidence of Mr. Berry's Alleged
Vendetta as follows:

The instant motion is but a veiled attempt by Berry to
have the jury reconsider the Court's summary judgment ruling
which limited infringement in this case to the time period of
April 1, 2003 to June 9, 2003 and held that any such infringement
was inadvertent and innocent. While the Employees agree that

evidence of Mr. Berry's vendetta against Fleming should not be considered by the jury in this case, to the extent that Mr. Berry seeks to exclude such evidence in order to preclude the Defendants from submitting any evidence concerning the Court's summary judgment finding of non-willful infringement, the Employees object. There is no connection between the Court's summary judgment ruling on infringement and Mr. Berry's vendetta. Berry's motion for reconsideration of all parts of the Court's June 27, 2003 Order was denied. The Court's rulings stand, and there is no reason to exclude them from the evidence in this case.

DATED: Honolulu, Hawaii, January 10, 2006.

/s/ Lyle S. Hosoda

LYLE S. HOSODA

RAINA P.B. MEAD

CHRISTOPHER T. CHUN

Attorneys for Defendants

MARK DILLON, TERESA NOA, MELVIN

PONCE, SONIA PURDY, JUSTIN

FUKUMOTO, ALFREDDA WAIOLAMA, and

JACQUELINE RIO